Court Revision of Damage Verdicts

Thomas Wood Jr.

Follow this and additional works at: https://ideas.dickinsonlaw.psu.edu/dlra

Recommended Citation
Thomas Wood Jr., Court Revision of Damage Verdicts, 44 DICK. L. REV. 290 (1940).
Available at: https://ideas.dickinsonlaw.psu.edu/dlra/vol44/iss4/4

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.
NOTES

COURT REVISION OF DAMAGE VERDICTS

The consequence of granting new trials in correction of excessive and inadequate verdicts for unliquidated damages has been to prolong litigation, swell bills of costs, delay final adjudication, and, in a large number of instances, have the same verdict repeated over and over, upon the new trial.\(^1\) Therefore, although the grant of a new trial is the fundamental historical remedy for an unsatisfactory verdict,\(^2\) courts and legislatures have sought to avoid the concomitant evils of new trials by exertion of direct and indirect control over verdicts.

\(^1\)Alabama Great Southern R. Co. v. Roberts, 113 Tenn. 488, 82 S. W. 314 (1904).
\(^2\)3 Bl. Comm. (21st London ed.) 387-88; Kuhn v. North, 10 S. & R. 398 (Pa., 1823), wherein the court, after a discussion of this remedy, said, in regard to the power of juries to determine damages, free of any interference, "...such an arbitrary power, vested in any body of men, judges or jurors, would be intolerable."
The primary duty to correct unsatisfactory damage verdicts is generally considered to rest with the trial court, which is familiar with the facts establishing the necessity for correction. In Pennsylvania it is said that, when it is apparent that the jury has returned a verdict clearly unwarranted by the evidence, the trial court has an imperative duty to exercise its powers of correction and should have no hesitancy in performing this duty.

Appellate consideration of the excessive or inadequate nature of verdicts, because of the trial court's firmer grasp on all related matters, is generally restricted to those cases where the verdict is so plainly and outrageously unwarranted as to suggest, at the first blush, passion, prejudice or corruption on the part of the jury, or abuse of discretion by the trial court. Many qualifications and variations of this standard exist, but it suffices for the instant discussion.

The constant obstacle raised to court interference with verdicts objectionable for excessiveness or inadequacy, and not remediable by correction through calculation or resort to fixed standards—verdicts for unliquidated damages—is the common constitutional guarantee of trial by jury. All devices have been subjected to scrutiny as potential invaders of the province of the jury. And, though it is generally agreed that a jury system unfettered by judicial control would promote its own discard, but few substantial inroads on the fundamental freedom of juries have been suffered.

It is the purpose of this note to discuss two methods by which the courts exert control over verdicts; to present considerations involved in the use of remittiturs and additurs, with particular regard to those entered under compulsory order.

**THE VOLUNTARY REMITTITUR**

It is a common practice for courts, when in their opinion a verdict for unliquidated damages is excessive, to give the plaintiff the option of avoiding a new trial by consenting to a reduction of the verdict to the amount that the court deems proper. If the plaintiff files a release or waiver of part of the verdict, judgment

---

8 According to its powers.


8The United States Supreme Court, in the case of Dimick v. Schiedt, 293 U. S. 474, expressed a conception common to the courts when, at page 300, it said, "Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care."

is given for the remainder and a new trial refused to the defendant. Such a release or waiver is termed a voluntary remittitur.10

As illustrative of the existence of conflict regarding the validity of even this general practice, it is worthy of note that the courts of England have, since 1905, refused to grant a voluntary remittitur.11 The reason given for upsetting a settled procedure was that an order reducing the verdict without the defendant’s consent, as well as the plaintiff’s, was a violation of the right to trial by jury. The defendant was considered to be entitled to a jury assessment within the maximum amount on which the court would enter judgment.

In the United States the device is generally conceded to effect no substantial deprivation of the right to trial by jury, the court being considered as not usurping the function of the jury but merely indicating the greatest amount which will be allowed to stand.12 The plaintiff is precluded from complaining by his voluntary acceptance,13 and the defendant may not object because he is not deprived of any right14 and is benefitted by the reduction.15 Some courts declare that the authority to determine when verdicts are not excessive can be implied from the authority to determine when they are excessive.16 On the basis of this conclusion, complete usurpation of the jury’s function could be justified, a possibility apparently not considered, a possibility which demonstrates the limitations of the major premise. Valid or not, these are theories offered in support of the voluntary remittitur.17 Extended discussions of the constitutional and practical aspects of this form of remittitur are contained in numerous sources,18 to which reference can be had for more detailed analyses.

The voluntary remittitur has been a frequent resort of Pennsylvania courts.19

---

11Watt v. Watt, [1905] A. C. 115. In Beli v. Lawes, 12 Q. B. D. 356 (1884), the voluntary remittitur had been approved. It was then stated that its use was recognized as proper. In reference to the Watt case, see Lionel Barber and Co. v. Deutsche Bank [1919] A. C. 304, 314.
14Arkansas Valley Land and Cattle Co. v. Mann, 130 U. S. 69 (1889).
15Boyer v. Anduiza, 90 Ore. 163, 175 Pac. 853 (1918).
16See Arkansas Valley Land and Cattle Co. v. Mann, 130 U. S. 69, 74 (1889). The court declared that, "The authority of the court to determine whether damages are excessive implies authority to determine when they are not of that character."
17In basing the invalidity of the additur on its deprivation of the plaintiff’s right to have a jury determine the amount which the plaintiff is entitled to, the courts so holding do not explain clearly why the defendant is not entitled to a similar right in cases of excessive damages.
The chief concern of the courts has been to discourage the imposition of unreasonable conditions.\textsuperscript{20}

**THE VOLUNTARY ADDITUR**

When a verdict is objectionable because inadequate, it is reasonable to consider that the courts should be endowed with a power to increase it with the consent of the defendant, ana
galogous to their power to reduce an excessive verdict with the consent of the plaintiff.\textsuperscript{21} But the practice of refusing a new trial upon the defendant's consent to a stated increase has not been as widely accepted as its counterpart.\textsuperscript{22}

The power to grant such additurs became a matter of special interest with the five to four decision, in 1935, of the United States Supreme Court in the leading case of *Dimick v. Schiedt*.\textsuperscript{23} The majority concluded that a federal trial court was without constitutional authority to increase, with the defendant's consent, the amount of a verdict to the lowest sum which the court thought might reasonably have been assessed by the jury. Admitting the analogy to the remittitur, the court declared itself to be out of favor with even that procedure but bound to its use by a long line of decisions.\textsuperscript{24} An extension of the doctrine by analogy was refused, the court stating:\textsuperscript{25}

"Nevertheless, this court in a very special sense is charged with the duty of construing and upholding the Constitution; and in the discharge of that duty, it ever must be on the alert to see that doubtful precedent be not extended by mere analogy to a different case if the result will be to weaken or subvert what it conceives to be a principle of the fundamental law of the land."\textsuperscript{26}

This decision provoked a burst of comment upon the principles involved in the use of voluntary additurs and remittiturs, and the analogy frequently claimed

\textsuperscript{20}Ralston v. Philadelphia R. T. Co., 267 Pa. 279, 110 Atl. 336 (1920). The court said, in reversal of a lower court order requiring the defendant to pay the reduced amount in a certain short time, that, "... this court does not approve of the growing tendency indiscriminately to enter orders of the character of the one now before us".

\textsuperscript{21}McCORMICK, LAW OF DAMAGES, (1935) 82; Note (1934) 32 Mich. L. Rev. 538.

\textsuperscript{22}Ibid.

\textsuperscript{23}293 U. S. 474 (1935). This case is generally viewed as a conservative outlawing of a convenient practice. There was a strong dissenting opinion by Justice Stone, the Chief Justice and Justices Brandeis and Cardozo concurring.

\textsuperscript{24}Beginning with the case of *Blunt v. Listle*, 3 Mason 102, Fed. Case No. 1578 (1822).

\textsuperscript{25}At page 300.

\textsuperscript{26}The Seventh Amendment provides: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact shall be otherwise reexamined in any court of the United States, than according to the rules of the common law." The majority of state constitutional provisions do not include the latter part of the federal provision, but provide, as Pennsylvania's, "that trial by jury shall be as heretofore, and the right thereof remain inviolate."
to exist between the two. For general discussion and for detailed analyses, which are outside the scope of this note, reference can be had to those treatments of the subject. It is sufficient, by way of summary, to note that there are authority and argument for both its use and its exclusion, and to note that, if the remittitur is not regarded as a substantial deprivation of jury trial on the question of damages, an additur need not be so regarded. It is difficult to see how the plaintiff is damaged more by the additur than the defendant is by the remittitur; both lose the chance for a more favorable verdict in a second jury trial.

Whatever decision is ultimately reached by the United States courts, it will not bind the states, as they are not controlled by the Seventh Amendment. Furthermore, the federal provision contains a phrase, not included in state provisions, which is the bulwark of the present federal rule.

Pennsylvania's position on the use of voluntary additurs, though recently confused by a lower court decision to the contrary, is that such are violative of the constitutional guarantee of jury trial, and therefore improper. The recent Superior Court case of Lemon v. Campbell solidified the stand of our courts. Declaring itself bound by the precedent established in the case of Bradwell v. Pittsburgh and W. E. Pass. Ry. Co., which has never been reversed or modified, the court refused to sanction use of the additur. In support of their conclusion the court distinguished the additur from the remittitur, saying that the remittitur is "merely lopping off an excrescence", while the additur establishes an amount never passed on by the jury, an amount substituted for the verdict of the jury. Another objection was that the successful plaintiff is given the option in the award of a voluntary remittitur while a voluntary additur would give the option to the "losing, negligent defendant". Thus, though the decision in the case of Svoboda v. City of Pittsburgh was reasonably deemed provocative of a reconsideration of the validity of voluntary additurs, any question as to their incorporation into Pennsylvania remedies is now resolved by the reiteration of the rule established in 1891.

30See note 26 supra.
34Act of June 24, 1895, P. L. 212, sec. 10, 17 PCB. Stats. (Pa.) § 198, which declares that decisions of the Supreme Court shall be received and followed by the Superior Court as binding authority.
35139 Pa. 404, 20 Atl. 1046 (1891).
36Italic's the court's. This is a distinction frequently made.
Compulsory Orders

It is clear today in nearly all the states, and in the federal courts, that neither the trial judge nor the appellate court can order a compulsory reduction or increase in the amount of a verdict for unliquidated damages.\(^8\) Notwithstanding the efficacy of such procedure in preventing plaintiffs from forcing new trials in hope of recovering larger damages than could be retained by consenting to a voluntary remittitur, the compulsory remittitur has been declared unconstitutional in almost every instance.\(^9\) Compulsory additurs or increases are apparently disallowed generally.\(^4\)

Despite the overwhelming authority to the effect that such action is violative of the constitutional guarantee of trial by jury, the Pennsylvania Supreme Court has on several occasions reduced absolutely the amount of verdicts.\(^4\) It has also declared the right of trial courts to reduce verdicts,\(^4\) but its declaration, when considered with reference to the action actually sanctioned, were apparently intended only to establish authority to reduce by procedures recognized constitut-

\(^8\)McCormick, Law of Damages, (1935) 78. Louisiana's contrary position is due to the fact that there is no constitutional right to trial by jury.


\(^4\)Note (1927) 53 A. L. R. 771; Amer. Ry. Exp. Co. v. Bender, 20 Ohio App. 436, 152 N. E. 197 (1926); Campbell v. Sutliff, 193 Wis. 370, 214 N. W. 374, 53 A. L. R. 771 (1927). There is some difference in the theories relied on by courts. The Wisconsin court, in Risch v. Latheaud, 211 Wis. 270, 248 N. W. 127 (1933), said only the plaintiff could complain as the court was increasing damages to the least amount it would allow to stand. The Washington court, in Sigdol v. Kaplan, 147 Wash. 269, 266 Pac. 154 (1928), said it was a denial of the defendant's rights.

\(^4\)Tauber v. Wilkinsburg, 309 Pa. 331, 163 Atl. 675 (1932) (reduction from $6,000 to $4,000 a verdict for pain and suffering). Court said that to let it stand would open the door to a type of litigation which should be restrained); Gob v. Pittsburgh Ry. Co. et al, 320 Pa. 225, 181 Atl. 489 (1935) (verdict reduced from $25,000 to $12,500 by trial court. Appellate court reduced to $7,500. Serious injuries entailing no permanent disability); Koontz v. Messer, 320 Pa. 487, 181 Atl. 792 (1936) (verdict of $25,875 for pain, shortening of leg, and partial loss of motion in hip joint, ankle, and knee. Held excessive. Reduced to $15,000); McLaughlin v. Tygard, 324 Pa. 46, 188 Atl. 105 (1936) ($5,000 awarded a 60 year old horse dentist, for pain, suffering and incapacity relative to vocation. Court said, "He is 60 years old. We think the ends of justice will be met if the verdict is cut down to $3,500); Ward v. Pittsburgh Rys., 332 Pa. 152, 2 A. (2d) 694 (1938) ($33,000 damages for permanent disability of 41 year old man, who would require care remainder of life, held too much by $8,000. Court estimated the earnings plaintiff could have anticipated, but did not concern itself with his increased needs, etc.); Voltz v. General Motors Acceptance Corp., 332 Pa. 141, 2 A. (2d) 697 (1938) (punitive damages of $2,500 reduced to $1,000, which court felt heavy enough to discourage the General Motors Corporation from repeating what amounted to theft of an automobile); Brown v. Paxton, 332 Pa. 260, 2 A. (2d) 729 (1938) (verdict of $6,500 for pain and suffering held excessive by $3,500. New trial considerable inconvenience to parties). See Beatty v. Netherlands Insurance Co., 119 Pa. Supra 567, 571, 181 Atl. 513, 514 (1935).

tional and preceded.\textsuperscript{43} This is borne out by the fact that the Supreme Court, in reducing absolutely, relies on statutory authority which is extended only to it.\textsuperscript{44}

It is submitted that the court’s conclusions concerning this statutory authorization are not unimpeachable, in light of the prior consideration of the act’s constitutionality and the effect of its enforcement as now construed. Section two of the act reads:\textsuperscript{45}

“The supreme court shall have power in all cases to affirm, reverse, amend or modify a judgment, order or decree appealed from, and to enter such judgment, order or decree in the case as the supreme court may deem proper and just, without returning the record for amendment or modification to the court below, and may order a verdict and judgment to be set aside and a new trial had.”

The constitutionality of this act was considered shortly after its enactment.\textsuperscript{46} The opinions upholding the act and discussing its constitutionality indicate that it would not have been held constitutional if it had been considered to confer the power of absolute reduction upon the court. It was held only that a new trial could constitutionally be granted for correction of an excessive verdict. The opinions are noteworthy for their detailed analyses of the constitutional guarantee of jury trial. Extension of the authority conferred by the act\textsuperscript{47} to include absolute reduction was made without consideration of the act’s constitutionality in that regard. The effect of the practice, as has been noted, is almost unanimously considered to be a violation of the constitutional right to trial by jury. In view of the attitude of the Pennsylvania courts relative to the constitutionality of the voluntary additur,\textsuperscript{48} it is difficult to justify the action of the Supreme Court in compelling reduction of excessive verdicts. If it is considered an invasion of the province of the jury to grant a new trial conditional upon the defendant’s consent to an increase, a reduction effected without consent of either litigant should reasonably be deemed an invasion.

\textsuperscript{43}Ibid.

\textsuperscript{44}Brown v. Paxton, 332 Pa. 260, 2 A. (2d) 729 (1938), where court reduced absolutely, applying one of three remedies set forth in \textit{Thirkell v. Equitable Gas Co.}, 307 Pa. 377, 384, 161 Atl. 313, 315 (1932), derived from Section 13 of the Act of May 22, 1722, 1 Sm. L. 132, 140, 17 PURD. STATS. (Pa.) § 41 note; Section 1 of the Act of June 16, 1836, P. L. 784, 17 PURD. STATS. (Pa.) § 41; and Section 2 of the Act of May 20, 1891 P. L. 101, 12 PURD. STATS. (Pa.) § 1164. In \textit{Brown v. Paxton} the court’s action was based on Act of 1891, the one extending the particular authority. For general discussion of these acts see Summers v. Kramer, 271 Pa. 189, 114 Atl. 525 (1921); Carbon County Judicial Vacancy, 292 Pa. 300, 141 Atl. 249 (1928); \textit{Commonwealth ex rel. v. Glass}, 295 Pa. 291, 145 Atl. 278 (1929). The court considers itself empowered to (1) reverse the judgment and award a new venire, (2) reverse the judgment and enter such judgment as the court below should have entered (which, when used as basis for absolute reduction, promotes confusion as to lower court’s powers), or (3) vacate the judgment and remit the record for further proceedings consistent with the opinion of the court.

\textsuperscript{45}Act of May 20, 1891 P. L. 101, 12 PURD. STATS. (Pa.) § 1164.

\textsuperscript{46}Smith v. Times Publishing Co., 178 Pa. 481, 36 Atl. 296 (1897).

\textsuperscript{47}See note 44, supra.

\textsuperscript{48}See discussion of voluntary additurs.
However, though the court may be considered to have taken liberties with the constitutional provision in thus extending its authority, its construction of the content and constitutionality are necessarily conclusive. For a state court to refuse a trial by jury is not a denial of a right protected by the Federal Constitution, even though it may have been clearly erroneous to construe the laws of the state as justifying the refusal. All the requirements of the Constitution are complied with, provided, in the proceedings which are claimed not to have been due process of law, the person concerned has had sufficient notice and adequate opportunity to be heard. Furthermore, the federal provision relative to jury trial does not control the state courts when a jury trial is had, as the first ten amendments are not concerned with state action, but deal only with federal action.

Whether the Supreme Court will construe the Act of 1891 as constitutionally empowering it to correct a verdict unsatisfactory because of its inadequacy is subject to some conjecture. It is doubtful whether "amend or modify" includes the power to increase. But, if the court, as it says, has the power to enter such verdict as justice may require, inadequate verdicts may also be corrected by compulsory orders, unless the generally professed unwillingness to interfere with inadequate verdicts survives the current contrary trend.

The Wisconsin Supreme Court, when confronted with a statutory provision authorizing it to "direct the entry of the proper judgment," declared that such provisions "must be so construed as not to confer upon this court the power to deprive parties of the right to trial by jury as guaranteed to them by the constitution." The court decided, despite contrary precedent, that arbitrary reduction was unconstitutional.

There is conflict as to even the practical desirability of court controlled juries. This is evidenced in the case of Hollen v. Montgomery Ward & Co. The majority declared that the institution of trial by jury can only be redeemed by a "judicious assumption of responsibility in regulating and controlling the actions of juries. . . ." The minority countered with a statement to the effect that the prestige of the courts has suffered from too much interference, with the result that sentiment is crystallizing in legislation extending the right to jury trial.

---

52 Campbell v. Sutliff, 193 Wis. 370, 214 N. W. 374 (1927). Oregon, under constitutional license, reduces verdicts absolutely. Paget v. Cordes, 129 Ore. 224, 277 Pac. 101 (1929). The Oregon Constitution, sec. 3c of art. 7, provides that, if "... the Supreme Court shall be of the opinion that it can determine what judgment should have been entered below, it shall direct such judgment to be entered. . . ." Though this could be construed to authorize the appellate court to direct only the judgment which the trial court should have entered, the construction has been that the appellate court can enter a judgment not available to the trial court.
53 203 Minn. 349, 281 N. W. 291 (1938).
CONSIDERATIONS SUPPORTING COMPULSORY ORDERS

There are several arguments or theories upon which support for compulsory orders might be based. Determination of facts by a court is not altogether improper in itself; courts, in considering motions for new trials, must enter into the nature of the cause, the evidence, the facts, and circumstances of the case. It has been suggested that the departure from the recognized form of trial by jury is one of procedure rather than one of substance;54 a suggestion apparently based on the assumption that there is no constitutional right to a new trial by a properly instructed and properly functioning jury.

It could be argued that the recognized power to determine how large an amount will be allowed, and the less frequently exercised but as logically proper power to determine how small an amount shall stand, includes the power to telescope the difference between the two amounts to obtain a definite amount which would be acceptable to the court. One writer has reasoned that, since the jury found that the defendant is liable to at least that sum, and the court has found that the plaintiff is entitled to no more, neither party has any valid objection.55 Assuming the validity of the voluntary remittitur in such situations, there is no apparent reason why the court should not compel it, in view of the fact that it need not allow any larger amount. To enable the plaintiff to force a new trial in the hope of getting a larger sum when the court has the acknowledged power to disallow such sum can hardly serve any just purpose.

That the constitutional guarantees of trial by jury are not deemed bars to all interference which was disallowed at the time of their establishment is evidenced by the general discard of the rule that the courts should not interfere where there is a "scintilla of evidence"56 supporting the verdict. It is agreed that the abolition of this rule does not amount to a usurpation of the power of the jury to make a finding on the evidence.57 The court is giving the only verdict that the jury could legally find; the only one which the court would need to accept. It has been suggested that the same line of reasoning could be used to support the compulsory remittitur—the trial court is only giving judgment for that amount of damages which the jury could legally have found and is not itself assessing damages.58 Must the court go through what appears to be an idle ceremony of resubmitting to the jury the question of damages, when it has the recognized power to refuse to accept any sum in excess of the amount it deems proper? There is a certain inconsistency or absurdity to the almost unanimous agreement that the court must do so in the absence of consent by the party prejudiced.

---

54 Case Note (1939) 5 U. of Pitt. L. Rev. 101.
55 Case Note (1922) 35 Harv. L. Rev. 616.
56 Wigmore, Evidence, (2d ed., 1923) Section 2494. See 64 C. J. 309 for further authorities.
57 Commissioners v. Clark, 94 U. S. 278 (1878); Meyer Brothers v. Houck, 85 Iowa 319, 52 N. W. 235 (1892). Pennsylvania has also abolished this rule. Raby v. Cell, 85 Pa. 80 (1877).
58 Note (1933) 18 Iowa L. Rev. 404.
The change in the nature of the questions submitted to the jury for determination affords another practical justification for compulsory orders. They are no longer of such nature that juries are confronted with simple issues as heretofore. In light of this changed condition, construction sustaining the constitutionality of the compulsory remittitur should meet with less objections than in the past. Furthermore, the law of damages is itself the by-product of widening control by judges over the action of jurors, for, as long as jurors were free to fix the amount in their own light, no law of damages was needed.

The generally recognized power to establish new and abolish existing rights of action might be deemed to afford a basis for legislative provision for absolute reduction or increase, upon the theory that power to create, abolish or preserve carries the implied power to establish conditions to creation, abolition, or preservation.

The jury system, prior to the time of its incorporation into our various systems of administration of justice, was never a stable concept. Its continuing development was the secret of its survival. Though the Seventh Amendment, strictest modern guarantee of the right, has been regarded as crystallizing jury trial in federal courts as it existed in England in 1791, the United States Supreme Court has shown that this is not a bar to all procedural developments. There must of course be a limit to encroachments, if its discard is not to result, but failure to modify its operation to enable integration with other fundamental revisions of judicial administration may also provoke its abandonment. It is worthy of note that the court, in ordering a compulsory remittitur, does not render the action of the jury nugatory as it respects the determination of liability as established by the jury, which determination is the basic jury junction. But, there remains the frequently voiced objection that the right to a trial by jury includes a determination by a properly instructed and properly functioning jury, and that, practically viewed, this departure from the ancient form of trial by jury is not one of procedure.

CONCLUSION

Although due weight is given to the arguments in their favor, it is questionable whether they outweigh the theoretical objections to compulsory orders. There is considerable force to the contention that judicial interference with objectionable verdicts does not arise from logic, and that even the consent of the parties prejudiced in voluntary reductions or increases is a fiction obtained by use of the "judicial pistol."

---

62Capital Traction Co. v. Hof., 174 U. S. 1 at 7 (1898).
63Arkansas Valley Land and Cattle Co. v. Mann, 130 U. S. 69 (1888).
However, in view of the increasing frequency with which the problem of excessive and inadequate awards of damages confronts the courts, it can fairly be considered one of policy and expediency rather than one solely of right. Greater control over juries is often a practical necessity, which is denied satisfaction by a static conception of the right to trial by jury. Since expediency of remedy may often take priority over conservative constitutionality of remedy, in the minds of litigants, a solution to this problem should be a matter of some concern. In this light,

Seemingly, if the jury system is to be retained, it would be a practically desirable modification to confer upon trial and appellate courts the power to correct directly awards of damages. However, assuming the wisdom of the modification, if properly administered, further court or legislative action is unlikely in the light of current authorities. General recognition of the power claimed by Pennsylvania's court of last resort cannot now be forecast.

THOMAS WOOD, JR.

STATEMENTS OF AN AGENT AS EVIDENCE AGAINST HIS PRINCIPAL IN PENNSYLVANIA

It is a general rule that declarations of an agent made by him in connection with his employment are admissible against his principal. The reason for allowing such statements to be introduced into evidence is pointed out in Baltimore and Ohio Relief Association v. Post, where the court said through Paxson, J.,

"What an agent says in the course of his employment, and within his authority, is evidence against his employer, because it thus becomes the act of the principal. Thus, if A is the agent of B to make a contract for the latter, what A says in regard to the contract at the time it is being made is part of the contract: it is the equivalent of the sayings or acknowledgments of the principal. They may be explanatory of the agreement, or [may] determine the quality of the act which they accompany, and therefore must be binding on the principal as the act or agreement itself. The declarations or admissions of an agent in such cases are admissible, not for the purpose of establishing the truth of the facts stated but as representations by which the principal is bound as if he made them himself, and which are equally binding whether the fact be true or false."

1HENRY, PENNSYLVANIA TRIAL EVIDENCE (3rd ed. 1939) sec. 76.
2122 Pa. 579, 19 Atl. 885 (1888).